IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.649 OF 1989

Dnyanadeo Ramchandra Nirmale]
age 32 years, Occupation service]
residing at Takali, Taluka Shirol] Appellant
District Kolhapur] (Org.Accused)

versus

State of Maharashtra] Respondent.

Mr.A.P.Mundergi i/by Mr.Vishal Thandani for the appellant.
Dr.F.R.Shaikh, APP, for the State.

CORAM : D.G.DESHPANDE
S.R.SATHE, JJ.
DATED : JANUARY 09, 2007.

JUDGMENT : [PER D.G.DESHPANDE,J.]

1. Heard the learned advocate Mr.Mundergi for the accused and learned APP Dr.Shaikh for the State.

2. The appellant/accused has filed this appeal against the order and judgment dated 28.8.89 of Additional Sessions Judge, Kolhapur by which the accused has been convicted under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment and fine.

3. As per the prosecution case, Dr.Rajan Deshmukh is the complainant. He had two sisters by name Ujawala and deceased Leena. Deceased Leena married with the accused on 4.3.1986. At that time the accused was working as a Junior Engineer in the Public Works Department at head-quarters at Jayasingpur. It is the case of the complaint that Leena was educated and accustomed to city life. She was social by nature. The accused came from rural area and had old and orthodox ideas and, therefore, he did not like modern behaviour of Leena and as a result, there were differences between them. The complaint advised Leena and the accused that they should get adjusted to new way of life. On 11.1.1987, the complaint learnt from his neighbour I.M.Jadhav that he had received a phone

message from Sangli that Leena and the accused have received burn injuries and are admitted in Sangli Civil Hospital . The complainant went there along with his parents and friend Yadav. He found that Leena was admitted in Sangli Civil Hospital and she had 90% burn injuries. Leena asked the complainant whether she should become alright and further told him that it all happened because of the burning cigarette of her husband. The complainant thereafter saw the accused who also had 30% burns and was admitted along with Leena. The accused also told same story that his burning cigarette fell on the sari of Leena and, therefore, she caught fire. Thereafter the complainant immediately shifted both Leena and the accused in ambulance to Kolhapur and admitted them in C.P.R. Hospital, Kolhapur for treatment. Leena died on the night of 13.1.87. Initially accidental death was registered under section 174 of the Criminal Procedure Code. Inquest panchanama and advance certificate of post mortem were also done. On 13.1.87 Circle Police Inspector Thorat went to place of incident, prepared panchanama. During investigation, the relatives of Leena were questioned. Their statements were recorded and thereafter offence

under Section 302 of the Indian Penal Code was registered. After completion of investigation, charge sheet was filed and the accused was made to face trial.

4. The accused denied to have committed murder of Leena. According to the accused, he was pulling on well with Leena. There were no quarrels between them. On the night of 11.1.87 they were watching T.V. in the house of Pravin Bhai. Thereafter they came to their house for taking dinner. Cooking gas cylinder was empty. Leena started preparing meals on kerosene stove. He was lying on the cot and was smoking cigarette. At that time Leena was sitting by his side on the floor. While reading paper, he had a nap and he woke because of the cry made by Leena. He saw that sari of Leena had caught fire. He immediately tried to extinguish the fire. His pant and shirt also caught fire and was burnt to his legs. He received burn injuries to his legs, hands, case and chest. People thereafter took them to Sangli Civil Hospital in a car and, therefore, according to him, this is an accidental death and not homicidal or suicidal.

5. The trial Court convicted the accused disregarding the fact that the accused himself had sustained 30% burn injuries. Therefore, the learned advocate Mr.Mundergi, appearing for the accused, vehemently urged that if the accused wanted to kill Leena by pouring kerosene upon her, the accused would have take care to see that he does not receive such extensive burns.

6. Mr.Mundergi, the learned advocate for the accused, also contended that the oral dying declaration made by Leena to her brother has been tendered on record by the prosecution itself. Leena was an educated girl. Her brother was a doctor and, therefore, Leena had no reason to make false dying declaration. If this piece of evidence of the prosecution supports the innocence of the accused, then it should not be rejected on any other hypothesis or for any other reason.

7. Mr.Mundergi also contended that on the day of incident Leena and accused had gone to see T.V. in the neighbour’s house which shows that they were pulling on well. There was no immediate cause or quarrel between them. They

came to their house and the incident occurred accidently.

8. Mr.Mundergi contended that admittedly, there were no eye witnesses and the neighbours who had come to extinguish the fire also did not implicate the accused in any manner whatsoever.

9. the learned APP on the other hand tried to contend that for causing such extensive burns, kerosene must have been used by the accused and, the panchanama, which shows blackened tiles, proves that kerosene must have been used and there was smell of kerosene also. However, Mr.Mundergi pointed out from the C.A. report that no kerosene residue was found on the clothes of Leena.

10. Our attention was drawn by the learned APP to the evidence of Dr.Rajan Deshmukh wherein he has stated that the accused himself approached him and told him that he (the accused) and Leena were not pulling on well, therefore, what should be done. But it is clear from the evidence of doctor that he has not stated about any ill-treatment at the hands of accused to Leena.

Doctor has also stated that he lodged compliant or Vardi on suspicion.

11. The learned AP also tried to rely upon the evidence of Ujawala - the sister of Leena. Ujawala was also doctor. She has stated in her evidence the married life of Leena. From that evidence it appears that there was sexual mal adjustment between them and the accused was over sexy and because of her fragile health, Leena could not sustained his urge. She had also given advice and medicines to Leena. According to her, the accused was also addicted to liquor. She has stated that as Leena was pregnant, she advised the accused not to have sexual intercourse with Leena for the period of three months and the accused should give complete rest to Leena.

12. Even if this evidence is accepted, it does not prove any motive on the part of accused, either to commit murder or to compel Leena to commit suicide.

13. As already stated, Leena was educated girl. Her sister and brother both were doctors. They were looking after her well, advising her on

sexual matters and giving medicines to her and, if it was unbearable for Leena to satisfy sexual urge of accused, that could not be said to any reason for murder or suicide. P.W.6 - Ujawala, in her evidence in para 4, has stated that when Leena was shifted to Kolhapur and admitted in C.P.R. Hospital, she asked repeatedly that she wants to tell something, then told them that Dnyanadeo Matchbox in the pocket, match-stick and Sari" Then she was also alleged to have said, "Money should be given to her father-in-law"

14. The learned APP therefore contended that from this evidence, it was clear that the demand of money was behind this offence. We are not in agreement with this submission. Because no-where in his evidence Dr.Rajan Deshmukh (PW 5) nor Ujawala (PW.6) have stated that any ill-treatment was given to Leena towards demand of money.

15. Other important thing is, in her evidence Ujawala (PW 6) admitted that she has not stated any of these things before police. She also admitted that the dispute between Leena and the accused was about sexual intercourse.

16. It appears from the record that the prosecution also tendered in evidence the Statement of Leena (Exhibit 35) recorded by P.H.C. Sangli. In that statement, Leena has stated,

> " on 11.1.87 I had seated on the ground at 9 p.m. in my house. My husband had seated near me on the cot. That time folds of my Terricot Saree burnt, accidently hence I shouted loudly and unlatched the door opened it and came out running, my husband also came out running and tried to extinguish the fire.
>
> I am burnt because my husband's cigarette fell on my saree and was fired at that time. I have no suspicion on anybody and I have no any complaint."

16. Mr.Mundergi, therefore, contended that if the police constable has recorded this statement, it is proved and exhibited, then coupled with the evidence of Dr.Rajan Deshmukh and the extent of burns received by the accused about 30%, then trial Court was not at all justified in

convicting the accused.

17. We find considerable force in the submission of Mr.Mundergi for the accused. This is not a case of ill-treatment or torture nor the case of suicide or murder. It is an accidental case. The accused had received 30% burns coupled with oral dying declaration to Dr.Rajan Deshmukh - the brother of deceased Leena and written dying declaration recorded by PHC, the accused deserved to be acquitted. Hence we pass the following order :-

:ORDER:

Appeal is allowed.

Conviction of the accused under Section 302 is set aside. He is acquitted of the offences.

The accused is on bail. His bail bond shall stand cancelled.

[D.G.DESHPANDE,J]

[S.R.SATHE, J]